Supreme Court, U.S.
FILED

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No. OFFICE OF THE CLERK

IN THE SUPREME COURT
OF THE UNITED STATES

OCTOBER TERM, 1997

Rodney Joseph Cox, et al.,

Petitioners,

v.

United States, Assistant Director
James Grant, et al.,

Respondents.

Appendix A

ON WRIT OF CERTIORARI FROM
THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

Rodney Joseph Cox, et al.,
RT 2 Box 118
Strombsburg Nebraska 68666
816-632-2087

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36 pp

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JURISDICTION

This is a Civil Claim for Damage action for certain unauthorized collection actions by the United States, et al., as well as those named and unnamed individuals within and without their official capacity employed and hidden by United States, et al. The 16th amendment to the United States Constitution in no way authorizes revocation of the 13th amendment, whatsoever.

This court has jurisdiction pursuant to 28 U.S.C, section 1340, 26 U.S.C. section 7433. Treasury Claims pursuant to 26 CFR 301.7433 have been duly filed by all Plaintiffs. No administrative remedy exists within any other statute for purposes of this action except at 26 U.S.C. 7433. No decision was presented by the Defendants in opposition to said Claims, whatsoever. The Sovereign Immunity of the United States is officially waived pursuant to the Defendants' decision to remain silent for a period of six months as specified at 26 CFR 301.7433-1(d)ii and therefore judgement is assured.

THE PARTIES

1. For purpose of the Federal Income Tax, Plaintiffs Linda Secora, et al., are members of a class of people (U.S. Citizens, Residents Aliens, and/or Non-resident Aliens) who at no time during the taxable year are engaged in a trade or business within the United States, and are so defined at 26 CFR 1.871-1(b)(i). All U.S obligations received by the Petitioners are gross securities defined at 26 U.S.C. 165(g) from sources without the United States.

2. On information and belief, Defendants United States, et al., are acting as agents of a foreign principal and not agents of the United States Government. The Defendant United States has employed and or devised schemes (hereinafter referred to as scheme) which purports to compel the voluntary compliance of the Plaintiffs with respect to the 16th amendment to the United States Constitution [codified at 26 U.S.C]. Said scheme purports to be successful upon the United States receiving a 1040 U.S. Individual Income Tax Return from the Plaintiffs which by label "elects" the Plaintiffs to be treated as subjects of the Internal Revenue tax.

3. On information and belief, Defendants named individually are in part, acting as Officers, Agents, Special Agents, or Employees of the United States Government in concert with others for the purpose of compelling the "scheme" implemented as their belief as to what the United States laws require. Fraud, coercion, fear and extortion are instruments of deception used by these Defendants for the purpose of compelling their "scheme".

4. On information and belief, Defendants individually are acting in part, outside their official capacity for the purpose of compelling their "scheme" and as such are personally liable for their conduct to the Plaintiffs. The Plaintiffs are unaware of any Law which would authorize acts against the free will of the Plaintiffs due to the substantial effect of the 13th amendment.

5. On information and belief, the 13th amendment is conclusive and remains without exception. U.S. Citizens, Resident Aliens, and Non-resident Aliens, are all beneficiaries to the 13th amendment. U.S. Citizens, Resident Aliens, and Non-resident Aliens, are all potential targets of the "voluntary compliance scheme".

NATURE OF CLAIM

6. Plaintiffs bring this action pursuant to 26 CFR 1.6013.6(b) and 1.871-10(d), thereby "electing" to revoke all 1040 Form elections to be treated as "residents" of the United States and to "treat real property income as effectively connected within the United States". Plaintiffs' claim for damages arose from fraud, coercion, and fear of the Defendants, thereby creating a mistake of law on the part of the Plaintiffs (See Exhibit A). The Defendants by supposed Sovereignty, have confined the Plaintiffs into **INVOLUNTARY SERVITUDE** in violation to the Thirteenth Amendment to the United States Constitution.

7. The amount of Judgement Damage award claimed is One Million Dollars of value and the direct economic damages sought is Twenty Million Dollars of value per each Claimant. The Defendants remain without opposition to Plaintiffs' Treasury Claims, thus the United States agrees for judgment in favor of Plaintiffs. (26 U.S.C. 7433(b). Exhaustion of all Administrative Remedies (26 U.S.C. 7433(d)1) has occurred, consent to suit exists within said record, and thus the United States sovereign immunity is waived pursuant to this action.

8. On June 23, 1995 in Joeckel, et al., v. United States, 4:95-CV-3016 8th Cir. 95-3532NEL, **AFFIRMED July 5, 1996)** this Court Ordered Joeckel, supra, dismissed for Lack of **Subject Matter Jurisdiction, and for Failure to State a Claim for which relief can be Granted** (Fed. R. 12(b)1 and 12(b)6).

9. In Joeckel, Supra, the Court relied upon the Defence of the United States which showed Plaintiffs' failure to file Treasury Claims as a means to which Joeckel, supra ought be dismissed. The Court found consent to this action did not exist. The Court found no evidence of any waiver of the United States sovereign immunity.

10. The Court, in Joeckel, supra, found that "judgement for damages shall not be awarded under subsection (b) unless the Court determines that the plaintiffs have exhausted the administrative remedies available to such plaintiffs within the Internal Revenue Service." The plaintiffs found that 26 CFR 301.7433 offers a waiver of Sovereign Immunity to such Plaintiffs upon the earlier of two options, 301.7433-1(d)i and or 301.7433-1(d)(ii). This action was dismissed without prejudice. The United States waives its Sovereign Immunity in the instant action pursuant to decisions rendered under 26 CFR 301.7433-1(d)i.

BACKGROUND

11. In 1865, the 13th Amendment was adopted to the United States Constitution, signed and authorized by the President of the United States at that time, Abe Lincoln. The 13th amendment states:

"Neither slavery nor involuntary servitude...shall exist in the United States or any place subject to their jurisdiction..."

12. On information and belief, Congress has jurisdiction over all things subject to their jurisdiction.

13. On information and belief, Congress passed the Corporation Income Tax Act of 1909. This act is thus subject to the Jurisdiction of the United States.

14. On February 25, 1913, Philander C. Knox, Secretary of State of the United States of America, published in the PRIVATE LAW of the UNITED STATES OF AMERICA by the SIXTY-SECOND CONGRESS, 1911-1913, on page 1785, his proclamation that the Sixteenth (16th) Amendment had been ratified by the states, thereby authorizing Congress to tax income under the Corporation Income Tax Act of 1909 on Federal Corporations (Subjects of Congress).

15. On information and belief, the Supreme Court of the United States ruled that: "This Amendment does not extend the taxing power to new subjects, ----". BRUSHABER v. UNION PACIFIC R. CO., 240 U.S. 1, 60 L.ed 493, 36 S. Ct. 236; STANTON v. BALTIC MINING CO., 240 U.S. 103, 60 L. ed 546, 36 S.Ct 278. The term "taxpayer" is defined at 26 U.S.C.[1988] 7701(a)(14) as any person subject to the Internal Revenue tax.

16. On information and belief, Congress passed 26 U.S.C. section 6013(a)(1) which states that "no joint return shall be made if either the husband or the wife at any time during the taxable year is a nonresident alien;".

17. On information and belief, Congress also made provision at 26 U.S.C. sec. 6013(g)(h) for a nonresident alien to "elect" to be treated as a resident of the United States (subject to Congress). Thus, the voluntary nature of the Federal Income Tax comes into play.

18. On information and belief, Plaintiffs are unaware of any constitutional authority for Congress or any part of the federal government to make any adhesion contract that would take away the sovereignty of the people or states of the Union. Therefore, the Defendant's reliance upon writing and/or making of "word-of-art" definitions in statutes and/or regulations that entrap the sovereigns is clearly unconstitutional. Methods promoted by Congress that seek the voluntary election of a People in procuring subject status with the United States [**26 U.S.C. 7701(A)(14) "taxpayer defined"; "the term taxpayer means any person subject to the Internal Revenue tax"**], should and is clearly only held by the United States at the discretion and meaning of the term voluntary subjection (**servitude**). Once "taxpayers" elect to revoke said voluntary election (servitude), said People are no longer considered subjects to the Internal Revenue tax by **LAW**.

19. On information and belief, the Secretary also made provision, at 26 CFR 1.6013-6(b) for "An election under this section shall terminate if either spouse revokes the election"; and 1.871-10(d)(1) or (2) whereby a decision to revoke an "election" may be made with or without the consent of the Commissioner.

Construction of the Statutes otherwise establishes Congressional Acts of **INVOLUNTARY SERVITUDE [Slavery] in direct violation to the 13th amendment.**

20. On information and belief, based upon the complexities of the tax Laws, Plaintiffs are unaware of any statutes, rules, or regulations which would compel the "voluntary compliance scheme" employed by the plaintiffs to file any U.S. Individual Income Tax Returns. The United States enjoins such schemes in an attempt to further coerce Plaintiffs (People) into "voluntary servitude".

21. Servitude and subjection have synonymous meanings.

COUNT I

22. On information and belief, the Defendants have recklessly and intentionally disregarded the provisions of title 26 section 6013(g)(h), 871(d) and the regulations promulgated thereunder and have refused, by fraud, coercion, fear to allow the Plaintiffs their rights to revoke the original Forms 1040 "elections" for all tax years ab initio, pursuant to 26 CFR 1.6013-6(b) and 1.871-10(d)(1), which were obtained by the Defendants involving purported acts of a voluntary nature (SEE 2nd Codicil attached within Exhibit A.

23. The actions of the Defendants have been reckless and intentional, with no statute or regulation authority, and have caused and are causing the Plaintiffs to suffer Slavery, and much financial damage.

COUNT II

24. The Defendants, have in part, within their official capacities and in part without official capacities, consciously, knowingly and willingly placed each Plaintiff herein under involuntary subjection to the 16th amendment, in violation of the 13th amendment to the Constitution for the United States of America.

CONCLUSION

Wherefore, Plaintiffs Linda Secora, et al, request that this court enter judgement in its favor and against the Defendants and hereby claim actual, direct economic damages as a proximate result of the reckless and/or intentional actions of the Defendants, pursuant to exhaustion of all administrative remedy pursuant to 26 U.S.C. § 7433(d)1. Judgement according to Treasury Claims 26 CFR 301.7433 is justifiably adequate.

SEE SIGNATURE PAGE LIST ATTACHED

UNITED STATE DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

Linda Secora, et al.,

v. 4:CV96-3356

United States, et al.,

MEMORANDUM AND ORDER ON
DEFENDANTS MOTION TO DISMISS

The defendants have brought a motion to dismiss the plaintiffs' complaint for lack of jurisdiction and failure to state a claim. (file 63). I have reviewed this matter and shall grant the defendants motion to dismiss. The plaintiffs however, shall be permitted to amend their complaint.

BACKGROUND

The plaintiffs are a group of Nebraska residents who are protesting the collection of their federal income taxes. They are not represented by counsel. They base their lawsuit on the argument that the continued application of the federal income tax laws to them violates the thirteenth amendment' proscription on involuntary servitude. The plaintiffs claim they have revoked their "election" to be considered United States taxpayers ab initio, that the defendants have, in effect, refused to honor their revocation, and that they are being forced to serve in violation of the thirteenth amendment. Implicit in the argument is the idea that they are non-

resident aliens to the United States. They have named as defendants the United States and many agents and employees of the Internal Revenue Service (I.R.S.)

The plaintiffs filed this action on September 20, 1996. Shortly thereafter, the magistrate judge entered an order pursuant to Nebraska L.R. 3.4, ordering summons to be issued to the defendants and requiring them to enter an appearance, but not otherwise directing them to respond to the complaint until directed to do so following his review of the complaint. (filing # 2). The plaintiffs objected to the magistrate judge's order. (filing 47). In light of Eighth Circuit precedent, I set aside hi order and directed the defendants to respond. (filing 56). They have done so, filing this motion to dismiss.

STANDARD OF REVIEW

"A motion to dismiss based on lack of subject matter jurisdiction is an argument that the court lacks the power to hear the class of cases to which the plaintiffs's claim belongs." FGS Constructors, Inc. v. Carlow, 823 F. Supp. 1508, 1511. (D.S.D. 1993), See Continental Cablevision, Inc. v. United States Postal Service, 945 F.2d. 1434, 1437-38(8th Cir. 1991)(holding subject matter jurisdiction relates to power of court to hear class of claims in which plaintiff's claim falls). The motion to dismiss may challenge either the factual truthfulness or the facial sufficiency of the plaintiffs jurisdictional allegations. Titus v. Sullivan, 4 F3d. 590, 593 (8th Cir. 1993)(citing Osborn v. United States, 918 F.2d. 724, 730 n.6(8th Cir. 1990).

When the court confronts a facial challenge, the court must presume all of the plaintiffs jurisdictional allegations to be true. d.If the plaintiff fails to allege a necessary element to support jurisdiction then the court must grant the motion to dismiss. Id.

DISCUSSION

Before addressing the defendants' motion to dismiss, I must first consider whether this court has subject matter jurisdiction to this action. The plaintiffs assert that subject matter jurisdiction is founded on 28 U.S.C. § 1340 (1994) and 26 U.S.C. § 7433(as amended). Section 1340 of title 28 of the United States Code grants the federal district courts original jurisdiction over "any civil action arising under any Act of Congress providing for Internal Revenue." Id. However, in order for a plaintiff to be able to sue under this provision, the United States must have waived its sovereign immunity with respect to the provision of the federal tax laws in question. Aqua BAr & Lounge, Inc United States Dept. of Treas., Internal Reve. Srv. 539 F.2d. 935 (3rd Cir. 1976)(holding grant of subject matter jurisdiction to district courts in 28 U.S.C. § 1340 is not a waiver of sovereign immunity); Essex v. Vinal, 499 F.2d. 226, 231 (8th Cir. 1074)(same), cert denied, 419 U.S. 1107 (1975); Geurkink Farms Inc. v. United States 452 F.2d. 643 (7th Cir. 1971)(same). Section 7433 of title 26 of the United States Code is such a waiver of the United States' sovereign immunity, but only with respect to lawsuits brought by a taxpayer for unauthorized

practices by I.R.S. officers or employees in the collection of the taxpayer's federal taxes. See 26 U.S.C. § 7433. Nominal, this is a lawsuit over the allegedly unauthorized collection actions of I.R.S. employees. Therefore, for the purpose of this motion to dismiss, I will accept that this case is properly brought under section 7433.

The defendants raise two main points in their motion to dismiss. First the contend that the individual defendants should be dismissed because under 28 U.S.C. § 7433, they may not be made parties to this action. Their position is well-taken. Section 7433 of title 26 of the United States Code permits a taxpayer to bring a lawsuit against the United States for unauthorized practices by I.R.S. officers or employees in the collection of the taxpayer's federal taxes. In relevant part, section 7433(a) states:

> If in connection with any collection of federal tax with respect to a taxpayer, any officer or employee of the internal revenue service recklessly and intentionally disregards any provision of this title, or any regulation promulgated under this title, such taxpayer may bring a civil action for damages against the United States in a district court of the United States...[S]uch civil action shall be the exclusive remedy for recovering damages resulting from such action.

26 U.S.C. § 7433(a)(emphasis added). The taxpayers exclusive remedy is an action for damages against the United States and not against individual I.R.S. officers or employees, not even those who allegedly recklessly or intentionally violated the law or regulation. Vennes v. An Unkown Number of Unidentified Agents, 26 F.3d. 1148, 145 (8th Cir. 1994), cert denied, 513 U.S. 1076(1995)(holding section 7433 is the exclusive remedy authorized by Congress)(citing McMillen v. United States, 960 F.2d. 187, 190-91(1st Cir. 1991); Wages v. Internal Revenue Service, 915 F.2d. 1230, 1235 (9th Cir. 1990), cert denied, 498 U.S. 1096(1991); National Commodity & Barter Ass'n v. Gibbs, 886 F.2d 1240, 1248 (10th Cir. 1989));Brown v. Johnson, 889 F.Supp. 355 (W.D. Ark. 1995). See also Baddour. Inc. v. United States, 802 F.2d 801, 808 (5th Cir. 1986); Cameron v. Internal Revenue Service, 773 F.2d. 126, 129 (7th Cir. 1985). Therefore, this court lacks jurisdiction to hear claims against the individual defendants. For this reason, these defendants shall be dismissed.

The defendants' second contention is that the United States should be dismissed because the plaintiffs complaint fails to state a claim upon which any relief can be granted. The plaintiffs argue that forced payment of taxes after they have revoked their taxpayer status results in their involuntary servitude in violation of the thirteenth amendment. It is the defendants' position that that argument is frivolous and fails to state a claim. Again, defendants position is well-taken.

The federal income tax is constitutional, see e.g. Cook v. Spillman, 806 F.2d. 948(9th Cir. 1986); United States v. Ferguson, 793 F.2d. 828(7th Cir.), cert denied, 479 U.S. 933(1986), and it does not result in involuntary servitude either in the payment of taxes or in its requirement that person who have a certain level of income must file a tax return and maintain supporting documents and records. See e.g. Cracchiola v. CIR 643 F.2d. 1383 (9th Cir. 1981); Ginter v. Southern, 611 F.2d. 1226, 1228-29 n-2 (9th Cir. 1979), cert denied, 446 U.S. 967 (1980); Kasey v. CIR, 457 F.2d. 369(9th Cir.), cert denied, 409 U.S. 869 (1972); Abney v. Campbell, 206 F.2d. 836 (5th Cir. 1953), cert denied, 346 U.S. 924(1970), reh'g denied, 402 U.S. 925 (1971); Porth v. Brodrick, 214 F.2d. 925(10th Cir. 1954); Beltran v. Cohen, 303 F.Supp. 889(N.D. Cal 1969)

The sixteenth amendment authorizes the imposition of a federal tax on incomes form whatever source derived. U.S. Const. amendment XVI. This amendment and the laws providing for internal revenue do not violate the thirteenth amendment. The latter is directed at prohibiting compulsory labor akin to slavery or that in practice would lead to slavery or work by force without choice. In no way does the requirement that persons reaching a certain threshold of income must file and pay taxes from those person to labor. To work or not work is the choice of the individual, the federal government does not compel one or the other. The thirteenth amendment is not violated by the sixteenth amendment. Such a contention is frivolous.

I also note that the plaintiff's argument implicitly relies on the premise that they are not residents of the United States. Their reliance on 26 U.S.C. § 6013(g) and (h), provisions dealing with non-resident aliens to the United States who choose to be treated as residents with respect to their federal income taxes, as well as their use of "without U.S." and "postal zone" in their filings and submissions leads me to this conclusion. Any contention that they are not residents of the United States as residents of the State of Nebraska, is meritless. As I have noted before;

The term United States is properly used to designate the territory over with the sovereignty of the United States extends. Hooven Allison v. Evatt, 324 U.S. 652, 671072(1945), overruled on other grounds sub nom, Limbach v. Hooven Allison, 466 U.S. 353 (1984). The sovereignty of the United States extends to all the states comprising it. The United States was not created as a separate state, but as a union of other States, of which each state is a part. Thus, at the time of the ratification of the Constitution, the "United States" referred to those states which had adopted the Constitution. Since that time, the United States has come to comprise the fifty states. Furthermore, when the United States came into being it was not limited to the territory of the District of Columbia, which did not yet even exist. Instead, the authority of the United States under the Constitution was understood to extend to the area bounded by the several states.

In addition, the United States Constitution provides for the admission of new states to the Union. See United States Const. art IV, § 3, cl.1. Pursuant to that provision, on March 1, 1867, Nebraska voluntarily entered into the Union created by the United States Constitution. The proclamation of admission of the State reads:

> "The people of Nebraska now ask for admission...."

Thus Nebraska entered the Union by actions initiated by its own citizens. As a state of the Union, it becomes subject to the laws of the United States, including those enacted by Congress dealing with the generation of revenue for the federal government. Nebraska is a part of the whole of the United States of America, rather than a state foreign to it. Thus its residents are residents of the United States.

Albers v. Internal Revenue, 1996 WL 196657(D. Neb. Feb. 15, 1996)(4:CV95-3068). As residents of the United States, they may not rely on section 6013(g) or (h) in making any argument that they have rescinded their election to be treated as residents and, therefore, taxpayers of the United States. The Plaintiffs complaint shall be dismissed. Furthermore, in light of the foregoing the plaintiffs' motion for relief, filing 61, is denied.

Finally, a further reason for dismissing this actin exists. Specially the plaintiffs failed to state what action were taken by the I.R.S. employees and

officers that violated federal law or regulation, separate from their alleged violations of the Thirteenth Amendment. The Plaintiffs have made generalized allegations of fraud, coercion and duress in their complaint, but these are based on their alleged violations of the thirteenth amendment in collecting the plaintiffs federal taxes. These are not sufficient to show what each defendant allegedly did, either recklessly or intentionally violating other federal law or regulations. There must be at least some statement to show what each defendant did to violate federal law in collecting the plaintiffs taxes. Federal Rules of Civil Procedures 8 demands sufficient information be included in the complaint to put the defendants on notice as to what action for which the plaintiffs are seeking to hold them responsible. Fed.R.Civ.P. 8. This plaintiffs have failed to do.

IT IS ORDERED that the defendants motion to dismiss, filing 63, is hereby granted. The plaintiffs shall have until April 30, 1997, to file an amended complaint.

IT IS FURTHER ORDERED that the plaintiffs motion for relief, filing 61, is hereby denied.

Dated April 18, 1997

Warren K. Urbom
United State Senior District Judge

PUBLISHER'S NOTE:

THE FOLLOWING PAGE WAS UNAVAILABLE FOR

18

TILMING:

States as defendants. I however, dismissed the individual defendants for lack of subject matter jurisdiction, as lawsuits brought pursuant to 26 U.S.C. § 7433, may only be brought against the United States. In that same memorandum, I dismissed the claim against the United States for failure to state a claim upon which any relief could be granted, because the basis of the plaintiffs lawsuit, namely that the continued application of the federal income tax laws to them violated the thirteenth amendments proscription on involuntary servitude, was frivolous, I granted the complainants an opportunity to file an amended pleading noting that they must allege facts that show what the I.R.S. agents did that violated federal law.

In accord with my order, the plaintiffs have filed an amended complaint with the court. In it they have forgone their thirteenth amendment argument but now allege that the sixteenth amendment applies only to income generated from interstate commerce.(filing 85). The plaintiffs claim that the I.R.S. employees assessments and collection of income from them violated the sixteenth amendment, because the plaintiffs derived all their income from purely intrastate activities. As a result, they claim they are not required to pay income tax. The United States has moved to dismiss the plaintiffs complaint pursuant to Rule 12(b)(6). (filing 87)

STANDARD OF REVIEW

Pursuant to Rule 12(b)(6), a motion to dismiss a complaint should not be granted unless it appears beyond doubt that the

plaintiff can prove no set of facts which would entitle him to relief. Morton v. Becker, 793 F.2d. 185, 187 (8th Cir. 1986)(citing Thomas W. Garland, Inc. v. City of St. Louis, 596 F.2d 784, 787(8th Cir., cert denied, 444 U.S. 899(1979)); Hishon v. King & Spalding, 467 U.S. 69, 73 (1984). In resolving such a motion, all well pleaded allegations in the complaint must be taken as true and all reasonable inferences arising therefrom must be weighed in favor of the plaintiffs. Morton 793 F.2d. 187.

DISCUSSION

The plaintiffs section 7433 claim is based on their belief that the I.R.S. employees violated the sixteenth amendment by assessing and collecting federal, personal income tax from plaintiffs, whose income is wholly derived from purely intrastate activity. (pl Br. in Oppn to Defs' Mot. to Dismiss at 1-2,3,4). The seem to believe that the federal taxing power is co-extensive with the federal commerce clause power and extends only to activities "among the several States." (See e.g. Am Compl. at pr. 6-7, 10; Pl. Brf). They rely on the just quoted language in the sixteenth amendment, equating it to similar language found in the commerce clause.

I address the plaintiffs argument in my memorandum and order of earlier this date on their motion to reconsider my April 18, 1997, decision dismissing their original complaint. I wrote:

With respect to the plaintiffs contentions that the sixteenth amendment applies only to income derived from interstate sources, it is a frivolous argument. The powers of Congress to tax are st out in four provisions of the Constitution. Article I, Section 2, Clause 3 provides that "[r]epresentatives and direct taxes shall be apportioned among the several States which may be included within the Union, according to their respective numbers..." Article I, Section 8, Clause 1 of the Constitution provides that "[t]he Congress shall have the power to lay and collect taxes..." Article I, Section 9, Clause 4 states that "[n]o Capitation, or other direct, tax shall be laid, unless in proportion to the Census or Enumeration herein before directed to be taken." Finally, the sixteenth amendment states that "[t]he Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration." In their motion, the plaintiffs have focused on the "among the several States" language as demanding that the income upon which the federal tax is imposed be derived from interstate commerce. Such is not the case.

None of the provisions just cited, unlike the Commerce Clause's restriction on Congress' power to regulate interstate commerce, restrict the Congress' power to tax only income derived form interstate commerce. The language employed in the sixteenth amendment to which the plaintiffs point eliminates restrictions on Congress taxing power stemming from Article I,

Section 2, Clause 3 and Article I, Section 9, Clause 4, concerning the need for apportionment among the states. Congress may impose taxes on individuals in the states"without apportionment among the several States, and without regard to any census or enumeration" and " on income from whatever source derived." It is this last language which governs from what ever source the income tax may be assessed, and the "among the several States" language only clarifies that Congress need not apportion such tax among the states based on their number or any census or enumeration. See Peck v. Lowe, 247 U.S. 165(1918)(requirement of apportionment among the states of tax on income no longer exists); Brushaber v. Union Pacific R.R. 240 U.S.1(1916)(same); Lovell v. United States, 755 F.2d. 517(7th Cir. 1984)(holding direct taxation without apportionment is constitutional); Parker v. Commissioner of Int. Rev. 661 F.2d. 71(5th Cir. 1981(same); Broughton v. United States, 632 F.2d. 706 (8th Cir. 1980)(same)cert denied, 450 U.S. 930(1981). It is not a restrictive grant permitting the tax to be imposed only where the individual has received income from interstate commerce. Instead, it is a broad grant of power to tax income from whatever source derived, including income derived from wholly intrastate actions and property. The plaintiffs' argument to the contrary is frivolous. As such, it does not warrant reconsideration of my earlier order dismissing their complaint.

Because the plaintiffs rest their claim for violation of 26 U.S.C. § 7433, on the I.R.S. employees' violations of the

sixteenth amendment's alleged restriction permitting the collection of taxes on income derived only from interstate commerce, and make no other factual allegations in their amended complaint, I need say no more on the plaintiffs claims.

I make one final note, however. The plaintiffs have pursued this matter claiming that the federal individual income tax violates the thirteenth amendment, as well as some supposed interstate restriction found in the sixteenth amendment. With respect to the first, this is such a body of case law now built up that such a claim is frivolous. Therefore, these plaintiffs are put on notice that offering such an argument in the future may result in sanctions being imposed for frivolous and vexations litigation. They are likewise informed that claims under the sixteenth amendment, while not exactly the same as raised here, have also been rejected numerous times before by numerous different courts. Therefore, they may be subject to sanctions in the future stemming from frivolous claims brought under that amendment. Finally, with respect to their claims that they are non-resident aliens to the United States of America, this justification for their opposition to the federal income tax is meritless and has been rejected under similar circumstances by countless courts. As such, it is a wearisome contention that should no longer see the light of day. Therefore, these defendants are placed on notice by this court that should this argument be raised in the future by them, they shall face the question of imposition of sanctions.

IT IS THEREFORE ORDERED that the defendant's motion to dismiss the amended complaint, filing 87, is hereby granted. The plaintiffs' case is dismissed with prejudice.

IT IS FURTHER ORDERED that filing 86, the plaintiff Clovis D. Colley's motion to withdraw as a plaintiff in this action is hereby denied as moot.

Dated May 30, 1997.

Warren K. Urbom
United States Senior District Judge

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No. 97-3143NEL

Linda Secora, et al.,

vs

United States of America, et al.,

Appeal from the District of Nebraska

JUDGEMENT

This court has reviewed the original file of the United States District Court. It is ordered by the Court that the judgement of the district court is summarily affirmed. See Eighth Circuit Rule 47A(a).

Dated September 9, 1997

Order entered at the direction of the Court.

Signed by the Clerk

Michael E. Gans

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

Linda Secora, et al.,	)
	)
Appellants,	)
	)
Case No. 97-3143NEL	
	)
v.	)
	)
UNITED STATES OF AMERICA, et al.,	)
	)
Appellees.	)

PETITION FOR REHEARING

The appellants, Linda Secora, et al., petitions the court for rehearing pursuant to Federal Rules of Appellate Procedures (hereinafter referred to as FRAP) Rule 35 and Rule 40 involving a question of exceptional importance to FRAP Rule 3 or "taking an appeal as of right."

QUESTION PRESENTED

1. Can the Eight Circuit Court of Appeals exercise or impose a motion or order of "judgement" pursuant to FRAP 47 and Local Rule 47A(a) upon appellants right to appeal, before appellants have filed brief in accordance to briefing schedule?

2. What part of FRAP 47 and Local Rule 47A(a) did the Circuit Court rely upon for summarily affirming District Court Judgement prior to questions being presented in opening brief by appellants?

3. What was frivolous about appellants "Notice of Appeal" docketed July 28, 1997?

4. Can Eighth Circuit Court make a FRAP 47 or Local Rule 47A(a) determination that appellants Notice of Appeal is frivolous when no appeal was due to be filed until September 16, 1997?

5. Was the September 9, 1997, "Judgement" of the Eighth Circuit Court an attempt to prevent appellants from their right to appeal?

6. Is Judgement by Eighth Circuit Court, where phrase "summarily affirmed" is inclusive within said judgement, a order that appellants' Notice of Appeal "is not within the court's jurisdiction?"

7. Is Judgement by Eighth Circuit Court, where phrase "summarily affirmed" is inclusive within said judgement, a order that appellant's Notice of Appeal "is entirely without merit?"

8. What part of the Appellant's Notice of Appeal did the Court rely upon when it summarily affirmed the District Court's Order?

9. On what date (including month and year) did the Eighth Circuit Court of Appeals amend Local Rule 47A(a) to allow for frivolous or meritless determinations based solely upon a appellants[']' Notice of Appeal?

10. On what date were such amendments to Local Rule 47A(a), which allowed for Notice of Appeals to receive adjudication by the Eighth Circuit Court without so much as an opening brief being filed, furnished to the Administrative office of the United States Courts?

BACKGROUND

The appellants' Notice of Appeal was mailed to the Appellate Court's docket on July 28, 1997, seeking review of the entire docket in case number 4:CV96-3356 from the United States District Court for the District of Nebraska. Appellants were to file their opening brief, by order of the Court in the case herein, on September 16, 1997 [FRAP 26(c)].

On September 9, 1997, this Court issued a "Judgement" wherein in it referred to the "Appeal from the United States District Court for the District of Nebraska" and where the Court "summarily affirmed" the judgement of the District Court. In the Courts September 9, 1997 order, the Court ordered in accordance with "Eighth Circuit Rule 47A(a).

Appellants procure a summary herein of Eighth Circuit Court Rule 47A(a).

> (a) **On Motion of Court.** The court on its own motion may summarily dispose of any appeal without notice....The court will dismiss the appeal if it is not within the court's jurisdiction or is frivolous and entirely without merit. The court may affirm or reverse when the question presented do not require further consideration.

The appellants applied "..." within the courts rule where reference is made to "in forma pauperis" on grounds such language of the rule is not applicable to the appellants herein.

ARGUMENT

The appellants have received unfair treatment by the Eighth Circuit Court of Appeals whereby the Court exercised it's discretionary functions applicable with issues contained in "promulgated" Local Rule 47A(a). Local Rule 47A(a) applies to the disposition of any appeal without notice. A fair construction involving the spirit of Local Rule 47A(a) is that:

a. the Court may "dismiss" the appeal if the appeal is not within the court's jurisdiction;

b. the Court may dismiss the appeal if the appeal is determined by the Court to be frivolous;

c. the Court may dismiss the appeal if the appeal is without merit;

d. the Court may affirm or reverse when the questions presented do not require further consideration.

SUPPORT FOR REHEARING

With regard to whether this Court has jurisdiction (number 1 above) to determine the merits of appellants request (right under Rule 3) for review of the District Court's Order, the Appellate Court obviously has jurisdiction based upon the prima facie, preponderance and beyond a reasonable doubt "evidence" of its Judgement entered September 9, 1997. If the Appellate Court decided it did not have Jurisdiction over the Notice of Appeal, then the Appellate Court would dismiss "for want of Jurisdiction." No Judgement upon the merits could be invoked.

With regard to whether the Court determined that appellants' Notice of Appeal was "frivolous" (number 2 above) its appears that the Eighth Circuit Court has imposed Rule 47 to oppose FRAP Rule 3. If the determination of the Appellate Court, with regard to a Notice of Appeal, was determined "frivolous," appellants' request the Eighth Circuit Court reconsider on grounds that the Appellate record does not contain any documents filed with the Clerk which could be relied upon to support a determination of "frivolousness."

With regard to whether the Court determined that appellants' Notice of Appeal is "without merit" (number 3 above) its appears that the Eighth Circuit Court has imposed Rule 47 to oppose FRAP Rule 3. If the determination of the Appellate Court, with regard to a Notice of Appeal, was determined "without merit," appellants' request the Eighth Circuit Court reconsider determination on grounds that the Appellate record does not contain any documents filed with the Clerk which could be relied upon to support a determination of "without merit." FRAP Rule 3 allows for the appellants to take the appeal as of right. The actions of the Appellate Court appear to be an attempt to prevent appellants' opening brief from being filed. The Appellate Court could not have determined that issues raised or questions presented were without merit since no such issues or questions have yet been presented. Appellants remained with 8 (eight) days to file such issues or questions when the Eighth Circuit Court of Appeals arbitrarily entered it's "summarily affirmation of the District Court's Order[s] and Judgement."

With regard to the Court affirming or reversing (number 4 above) when the questions presented do not require further consideration, the appellants undeniably argue that the Appellate Court did "summarily affirm" the District Court's Order but upon what questions presented is alarming. Appellants have not filed a Court Ordered opening brief (opening brief means appellants survived jurisdictional test of Clerk) because 8 days prior to such being due, the Appellate Court entered the "Judgement" herein now being requested to be reversed. Appellants have not formally presented, as of right, or been allowed to present any issues or questions for review and thus the Judgement of summarily affirmed should be "REVERSED".

CONCLUSION

The appellants, Linda Secora, et al., pursuant to FRAP 35, 40 and 47 and Local Rule 35, 40, and 47, request the Eighth Circuit Court of Appeals rehear the appellants' appeal by issuing appropriate dates for appellants' opening brief and the rest of the briefing schedule, reverse it's Judgement of September 9, 1997, and issue a mandate that FRAP 47 and Local Rule 47A(a) can not be imposed under usual and normal conditions, unless and until issues or questions are presented to which a determination of frivolous or meritless can be reasonably made by the Court, and or unless the Court makes a predetermination it lacks jurisdiction on the within matter wherein the issues of frivolous or meritless are a moot point.

Respectfully Submitted

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No. 97-3143NEL

Rodney Joseph Cox, et al.,

v.

United States of America, et al.,

Order denying Petition for Rehearing and Suggestion for Rehearing En Banc

The suggestion for rehearing en banc is denied. The Petition for rehearing by the panel is also denied.

November 14, 1997

Order entered at the direction of the Court

Signed by the Clerk

Michael E. Gans

IN THE SUPREME COURT OF THE UNITED STATES

February 17, 1998

Mr. Rodney Joseph Cox, et al.,

Re: Application A-608

Dear Mr. Cox, the application for an extension of time within which to file a petition for a Writ of Certiorari in the above entitled case has been presented to Justice Thomas, who on February 17, 1998, extended the time to and including March 14, 1998.

Signed by the Clerk

Jeffrey D. Atkins